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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,478	05/23/2001	Scott C. Miller	2171A	2993
7590	06/17/2004			
Milliken & Company P.O. Box 1927 Spartanburg, SC 29304			EXAMINER JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary

Application No.

09/864,478

Applicant(s)

MILLER ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-16, 22, 23, 26, 28-30, 140 and 144-146 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-16, 22, 23, 26, 28-30, 140, and 144-146 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed March 16, 2004, has been entered. Claims 1-11, 17-21, 24-25, 27, 31-139, 141-143, and 147-161 are cancelled. While pending claims 12-16, 22, 23, 26, 28-30, 140, and 144-146 have been amended.
2. The cancellation of claims 1-11, 17-21, 24-25, 27, 31-139, 141-143, and 147-161 renders moot the rejections against said claims. Additionally, the amendments to the pending claims are sufficient to withdraw the 112, 2nd rejection of said claims as set forth in section 3 of the last Office Action.

Claim Objections

3. Claim 16 is objected to for its dependency upon both claim 1 and claim 12. For the purpose of examination, claim 16 is interpreted as being dependent upon claim 12 since claim 1 has been cancelled. Claim 26 is similarly rejected. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 140 and 144-146 are rejected under 35 USC 103(a) as being unpatentable over Higgins '857 or Higgins '968 patent in view of EP 048 986 issued to Porter et al.

Both Higgins patents teach a carpet tile including a primary carpet base and a cushion back. However, both patents are silent with respect to suitable face weights for the primary

Art Unit: 1771

carpet base. As previously discussed, the presently claimed low face weight of less than 20 oz/yd² is known in the art. For example, Porter teaches a polyurethane foam backed carpet having a nylon pile face weight of 14 oz/yd² (page 11, lines 22-30). Thus, it would have been obvious to one skilled in the art to select a face weight as presently claimed and disclosed by Porter in order to produce a light weight, yet durable and aesthetically pleasing carpet.

Additionally, it is asserted that a carpet tile produced by the combination of Higgins and Porter would meet the presently claimed properties of Hexapod rating, Appearance Retention Rating, Hexapod color change test results, and Hexapod pile height retention result. Specifically, since the combination of art teaches the presently claimed chemical and structural features, it is reasonable to presume that the claimed properties are also present. The burden is upon applicant to prove otherwise. Therefore, claims 140 and 144-146 are rejected as being obvious over the cited prior art.

6. Claims 12-16, 22, 23, 26, and 28-30 are rejected under 35 USC 103(a) as being unpatentable over Higgins '857 or Higgins '968 patent in view of EP 048 986 issued to Porter et al. and in further view of EP 309 816 issued to Turner et al.

Independent claim 12 has been amended to limit a carpet tile comprising a primary carpet having a face weight less than or equal to 15 oz/yd² and a cushion layer having a polymer weight of about 2.72-8.24 oz/yd². Higgins '857 teaches a cushion layer of about 10-60 oz/yd², while Higgins '968 teaches a density of about 12-20 lb/ft³. Porter teaches a low face weight of 14 oz/yd². As previously set forth, it would have been obvious to one skilled in the art to employ the low face weight of Porter in the Higgins carpet tile in order to produce a cost-effective and light weight, yet durable and aesthetically pleasing carpet tile.

Additionally, it would have been obvious to one skilled in the art to employ the cushion polymer weight of 2.72-8.24 oz/yd². Specifically, Turner teaches a polyurethane foam cushion layer for a carpet may range from 5-500 oz/yd². Additionally, Turner teaches fillers may be present in an amount ranging from 5-500 parts by weight. Thus, it would have been obvious to one skilled in the art to decrease the amount of foam polymer present by increasing the amount of filler and/or decreasing the thickness of the foam cushion layer since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 25 USPQ 215. In this case, a decrease in the amount of polymer in the foam cushion would provide a cost effective, light-weight carpet cushion. Therefore, claims 12-16, 22, 23, 26, and 28-30 are rejected as being obvious over the cited prior art.

Response to Arguments

7. Applicant's arguments have been considered with respect to the new rejections set forth above.
8. With respect to applicant's assertion that the Porter reference teaches high cushion weights are required with low face weight carpets, it is noted that there is nothing in Porter that requires the foam backing to be of a high weight when in conjunction with a low face weight. In other words, there is no explicit statement or even suggestion that low face weights are only suitable with high foam weights. Additionally, the so-called high cushion weights disclosed in Porter are not directly comparable to applicant's claimed cushion polymer weight. While applicant's weight is based upon the polymer (e.g., polyurethane foam) weight, Porter's weights are for the polymer and filler combined. [Note Porter page 13, 3rd paragraph and page 9, 1st

Art Unit: 1771

paragraph.] Thus, applicant's assertion that the Porter reference is a clear teaching that low weight face carpets must be combined with high weight cushion layers is unfounded.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
June 12, 2004